

STAND. COM. REP. NO. 2186

Honolulu, Hawaii

FEB 11 2014

RE: S.B. No. 2126  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2014  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 2126 entitled:

"A BILL FOR AN ACT RELATING TO MEMBERS OF CONGRESS,"

begs leave to report as follows:

The purpose and intent of this measure is to allow newly-elected members of Hawaii's congressional delegation to accumulate seniority in Congress more quickly than other newly-elected congressional members representing other states by requiring the Governor to immediately appoint the congressional member-elect, other than the incumbent member, when the incumbent member vacates the office after the general election, but prior to the expiration of the incumbent member's term.

Your Committee received testimony in support of this measure from one individual. Comments on this measure was submitted by the Department of the Attorney General, Office of Elections, League of Women Voters of Hawaii, and one individual.

Your Committee finds that the United States Congress operates under a seniority system that grants a variety of privileges to its members who have served the longest. These privileges include congressional committee assignments and the awarding of committee chair positions. This measure allows Hawaii's congressional members to gain a slight seniority advantage in Congress by requiring the Governor to appoint the congressional member-elect, other than the incumbent member, to fill the congressional seat if



the incumbent member vacates office after a general election, but before the expiration of the incumbent member's term.

Your Committee recognizes the concerns raised in written testimony. The Department of the Attorney General testified that the procedure that requires the Governor to fill a vacancy caused by an incumbent member of the United States House of Representatives vacating office is inconsistent with Article I, Section 2, Clause 4 of the United States Constitution. The United States Constitution requires such vacancies to be filled by election. The Department noted that existing law is consistent with the United States Constitution because the law requires that a special election be held to fill a vacancy in the United States House of Representatives and recommended that section 3 of this measure be deleted.

Furthermore, regarding section 2 of this measure, which proposes a procedure for the Governor to fill a vacancy caused by an incumbent member of the United States Senate leaving office, the Department of the Attorney General testified that existing law is silent and does not address a situation where a vacancy occurs after a general election when a candidate other than the incumbent has already been elected to assume office at the expiration of the incumbent's term. Although the Department testified that providing a procedure for the Governor to appoint the member-elect to the vacant Senate seat appeared to be consistent with the United States Constitution, it suggested the language be amended to clarify that the appointment be for the remainder of the incumbent member's unexpired term.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the amendments suggested by the Department of the Attorney General to:
  - (A) Delete section 3 of this measure, which would have required the Governor to fill a United States House of Representative vacancy caused by the incumbent member vacating office, because this language appears to be inconsistent with the United States Constitution; and
  - (B) Add language to the procedure for the Governor to appoint the member-elect to a vacant United States Senate seat caused by the incumbent member vacating

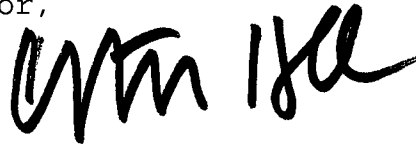


office to clarify that the appointment be for the remainder of the incumbent member's unexpired term; and

- (2) Making technical, nonsubstantive amendments to the purpose section of this measure for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2126, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2126, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



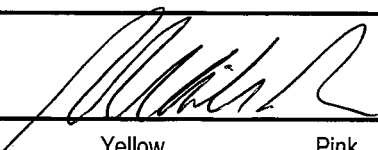
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CLAYTON HEE, Chair



The Senate  
Twenty-Seventh Legislature  
State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <div style="font-size: 1.2em; font-family: cursive;">SB 2126</div>	Committee Referral: <div style="font-size: 1.2em; font-family: cursive;">JDL</div>	Date: <div style="font-size: 1.2em; font-family: cursive;">01-30-14</div>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312         </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311         </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310         </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313         </div> </div>				
<b>Members</b>	<b>Aye</b>	<b>Aye (WR)</b>	<b>Nay</b>	<b>Excused</b>
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike				✓
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les				✓
SOLOMON, Malama	✓			
SLOM, Sam	✓			
TOTAL	5			2
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> Adopted           <input type="checkbox"/> Not Adopted         </div>				
Chair's or Designee's Signature: <div style="font-size: 1.5em; font-family: cursive; margin-top: 10px; text-align: center;">  </div>				
<b>Distribution:</b> <div style="display: flex; justify-content: space-between; font-size: 0.8em; margin-top: 5px;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

\*Only one measure per Record of Votes